

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

Jonathan Smith,	.	Docket #CV-12-4408 (ADS)
	.	
Plaintiff,	.	
	.	United States Courthouse
V.	.	Central Islip, New York
	.	January 16, 2013
Vincent Fredrico,	.	10:05 p.m.
	.	
Defendant.	.	

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TRANSCRIPT OF STATUS CONFERENCE  
BEFORE THE HONORABLE E. THOMAS BOYLE  
UNITED STATES MAGISTRATE JUDGE

APPEARANCES:

For The Plaintiff:	Scott M. Moore, Esq. Moore International Law Office 45 Rockefeller Plaza-Ste. 2000 New York, NY 10111
For The Defendant:	Chris P. Termini, Esq. Assistant County Attorney Office of the Suffolk County Attorney H. Lee Dennison Building P.O. Box 6100 100 Veterans Memorial Highway Hauppauge, NY 11788
For Robert Trotta:	Diane Leonardo-Beckmann, Esq. United States Attorney's Office Eastern District of New York 601 Federal Plaza Central Islip, NY 11722

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1 (Proceeding in progress)

2 MR. MOORE: For the Plaintiff, Scott M. Moore --

3 THE CLERK: Check your -- is your mic on? Can you  
4 turn your microphone on?

5 THE COURT: Yes, at the base of it, there should be  
6 a green light if it's on.

7 MR. MOORE: The green light is on now.

8 THE COURT: Good.

9 THE CLERK: Okay. Just state your appearance.

10 MR. MOORE: Thank you. For the Plaintiff, Scott M.  
11 Moore, Moore International Law PLLC, 45 Rockefeller Plaza,  
12 Suite 2000, New York, New York 10111. Good day, Your Honor.

13 THE COURT: Yes. Good morning.

14 MR. TERMINI: For Defendant, Fredrico, Assistant  
15 Suffolk County Attorney, Chris Termini, Office of the Suffolk  
16 County Attorney, H. Lee Dennison Building, Hauppauge, New  
17 York. Good morning, Your Honor.

18 THE COURT: Good morning. I put this on for an  
19 initial conference. I'm aware of the Notice of Appeal -- oh,  
20 excuse me. Ms. --

21 MS. LEONARDO-BECKMANN: That's okay.

22 THE COURT: Ms. --

23 MS. LEONARDO-BECKMANN: For --

24 THE COURT: -- Leonardo -- Trotta.

25 MS. LEONARDO-BECKMANN: Yes, for Detective Trotta,

1 Your Honor. Diane Leonardo, Assistant United States Attorney.

2 THE COURT: Good. As I was saying, I saw the Notice  
3 of Appeal on the 14th, but I don't think it affects anything  
4 here. The general rule of thumb is if the issues on appeal in  
5 any way affect the issues before the District Court, then we  
6 wait. Do you see any reason for waiting, as far as your  
7 appeal? I mean the discovery goes forward regardless of  
8 whether you get a Preliminary Injunction or not.

9 MR. MOORE: Well, Your Honor, that would require the  
10 Plaintiff to be litigating in two forums. We would request  
11 that this initial conference be adjourned until a decision is  
12 made in the 2nd Circuit.

13 THE COURT: What's the difference? You still have  
14 discovery in the case.

15 MR. MOORE: Well, as I indicated, we -- that would  
16 require us to be litigating in two forums, and with the time  
17 and expense on the Plaintiff.

18 THE COURT: I don't think that's a legal cause to  
19 stay a case. I'll give you an opportunity to make an  
20 application under 26(c), but anything the Defendants want to  
21 say here?

22 MS. LEONARDO-BECKMANN: Well, Your Honor, Detective  
23 Trotta, you know, as I indicated, is represented by the U.S.  
24 Attorney's Office. We have not been served yet with the  
25 complaint in accordance with Rule 4, I think it's (i)(d),

1     which requires service upon the United States Attorney's  
2     Office and the United States Attorney General, and we've not  
3     been served yet.

4             MR. MOORE:   Well, Your Honor, that will be one --

5             THE COURT:   Let's disturb these folks.

6             MR. MOORE:   -- that will be one of the issues  
7     litigated on appeal, is to whether Defendant Trotta is  
8     considered a Federal Defendant under the Federal Rules and  
9     would be required to be served in that fashion.  That's  
10    another reason to stay the matter in this Court, pending the  
11    appeal outcome.

12            THE COURT:   Why don't you serve them?

13            MR. MOORE:   Well, our position is Defendant Trotta  
14    is not a Federal Defendant, and it would seem to undercut our  
15    position if we were to follow the advice of Defense Counsel  
16    and serve in accordance with a rule that we don't believe  
17    applies.  That -- all sorts of laws are triggered by such a  
18    status and we oppose that status and we would want the 2nd  
19    Circuit to review that issue as well as the --

20            THE COURT:   So --

21            MR. MOORE:   -- denial of the Preliminary Injunction.

22            THE COURT:   Well, if you want to make Application  
23    for a Stay and -- or perhaps it would be appropriate to carve  
24    out Detective Trotta at this time, since Detective Trotta  
25    hasn't been served?

1           MR. TERMINI: In terms of the case itself, Judge, I  
2 don't believe that really is possible.

3           THE COURT: Really?

4           MR. TERMINI: It's just -- he's too entwined in the  
5 factual elements of what took place in the case to just  
6 exclude him and somehow proceed with the rest of it, and then  
7 pick him up at a later date or whatever. There's documents  
8 involved. There's a lot of stuff that's involved.

9           THE COURT: Is the County involved?

10          MR. TERMINI: Well --

11          THE COURT: In the complaint?

12          MR. TERMINI: -- it's our position, we assisted a  
13 federal operation --

14          THE COURT: Okay.

15          MR. TERMINI: -- and that's why Fredrico was named  
16 because he was on the seat as part of an assigned assist. And  
17 so we really believe we're secondary and I think that the  
18 least viable portion of the case is to try to, you know,  
19 departmentalize what happened. That, to me, doesn't make any  
20 sense. I mean if the Plaintiff doesn't want to go anywhere  
21 with this, and he wants to put all of his eggs at this point  
22 in the 2nd Circuit, so be it. That's the way I feel. You  
23 know, I'm not telling him how to proceed in any way, shape, or  
24 form, but I would tell the Court it doesn't make much sense to  
25 somehow, you know, segregate the Defendants and try to somehow

1     piecemeal proceed. In the long run, it gets nowhere to do  
2     that, Judge.

3             THE COURT: So you want a stay also?

4             MR. TERMINI: Well, I'll do anything -- I haven't  
5     had a Plaintiff come in here and essentially ask --

6             THE COURT: Usually --

7             MR. TERMINI: -- for a stay.

8             THE COURT: -- Plaintiffs don't want stays --

9             MR. TERMINI: That's --

10            THE COURT: -- I'm very, very surprised --

11            MR. TERMINI: I find it unusual.

12            THE COURT: -- Mr. Moore that you want a stay in  
13     this case. You've got nonparty discovery that you can do with  
14     regard to Detective Trotta. I mean, you don't have to be a  
15     party in order to do discovery, as a matter of fact.

16            MR. MOORE: Well, Your Honor, if my adversaries  
17     would, as they seem to be, stipulating to a stay here that --  
18     and seeking, perhaps, an expedited review in the 2nd Circuit  
19     on the matter, that would perhaps help move things along  
20     there.

21            THE COURT: I don't see -- you want to articulate  
22     that? I don't -- that seems to be your conclusion. I don't  
23     understand that. To me, the way you move a case along and  
24     expedite it is you set a discovery schedule. It'll probably  
25     be a year before you get a decision on your appeal. Aren't

1     you concerned about that?

2                 MR. MOORE:  Yes, of course, but this is the position  
3     we're in, Your Honor, the --

4                 THE COURT:  But it's not going to affect discovery.  
5     Assuming that you were granted the Preliminary Injunction, you  
6     still have to prove your case.  You'd still want to do  
7     discovery, unless you want to waive discovery.

8                 MR. MOORE:  I understand that, Your Honor.  The  
9     issue remains of Defendant Trotta's status as to whether or  
10    not he's a Federal Defendant, and right now, he's not served  
11    as a Federal Defendant, although there's -- he's being  
12    represented in the forum.  There's also the risk if we move  
13    forward in discovery without him as a party, there could be  
14    possibly duplicative requirements down the road if he is found  
15    to be a party and not a Federal Defendant.  There's a thorny  
16    issue of his status, which we would -- it seems to have that  
17    clarified by the 2nd Circuit would be a prudent way to move  
18    forward in the case.

19                THE COURT:  But his status isn't really affected by  
20    discovery if you can take non-party discovery, which you  
21    clearly can.

22                MR. MOORE:  That's true, but there's his status  
23    under the rules, and to what -- the type and manner of the  
24    discovery, we just have a concern about moving forward with  
25    him as a non-partied --



1           THE COURT: What do you see as the discovery issues  
2 in this case? Do you need discovery? Let's start with that  
3 basic fundamental.

4           MR. MOORE: Yes, yes.

5           THE COURT: What are you looking for?

6           MR. MOORE: I anticipate, first, information  
7 pertaining to whether the client, the Plaintiff, and other  
8 Shinnecock Indians are being targeted because of their racial  
9 status as members of the Shinnecock Indian Nation. And that  
10 is going to be requiring --

11          THE COURT: So what do you need?

12          MR. MOORE: I anticipate we would be needing  
13 internal memoranda, notes, communications pertaining to the  
14 racial status of the client and whether --

15          THE COURT: You don't really expect there to be a  
16 memo out there with regard to, "Oh, let's discriminate against  
17 the Shinnecoeks?"

18          MR. MOORE: Whether there's a smoking gun --

19          THE COURT: What is the specific discovery that  
20 you're looking for? It seems to me you're raising nothing but  
21 academic legal issues. Is that what this case is all about?

22          MR. MOORE: No, Your Honor.

23          THE COURT: Are there factual disputes? What are  
24 the factual disputes?

25          MR. MOORE: We need information that would show --

1 the conclusion that I'm putting forth to the Court --  
2 information about the targeting of the client because of his  
3 race, and whether the --

4 THE COURT: So you want any memos in connection with  
5 this incident --

6 MR. MOORE: Yes.

7 THE COURT: -- or any other incident that may give  
8 rise to that?

9 MR. MOORE: Yes.

10 THE COURT: I mean, they're going to limitations --

11 MR. MOORE: Yes.

12 THE COURT: It's basically going to be limited,  
13 probably, to this incident.

14 MR. MOORE: Yes. Limited at first, anyway, as to  
15 this particular incident, and to where and what -- by what  
16 means the evidence was logged. Because as the information is  
17 indicated in the complaint, there was a fictitious control  
18 number assigned to the seizure and the property just  
19 disappeared into a black hole. There is no valid receipt  
20 that's been issued. There was no communication with the  
21 client about any legal proceedings as to why it was taken or  
22 how it could be received back. So we need documentation that  
23 shows the truth as to why the property was taken, by what  
24 means.

25 THE COURT: How much time do you think you need for

1 discovery in this case?

2 MR. MOORE: I think six months.

3 THE COURT: I think you have to take into  
4 consideration that the Shinnecocks are the only ones who are  
5 really dealing in cigarettes, do you not?

6 MR. MOORE: Well --

7 THE COURT: Did it ever occur to you that maybe that  
8 had something to do with why they're targeted?

9 MR. MOORE: Well, there's Indian nations within the  
10 state of -- located within the territorial boundaries of the  
11 State of New York. There are many Indian nations engaging in  
12 sales of cigarettes and other properties and this is not an  
13 isolated incident, we believe, that there is a pattern of  
14 police seizing Indian property, whether it's cigarettes or  
15 other items, and there's no legal proceedings initiated. It  
16 just disappears. And there is a -- and where it goes, why  
17 it's taken, those are mysteries that this is just one incident  
18 that we believe is part of a larger statewide matter that's  
19 between the State of New York and Indian nations and the  
20 sovereignty conflicts, and it appears to us that there's --  
21 this is one incident as part of a pattern of just seizing  
22 Indian property and it disappears.

23 THE COURT: All right. At the request of the  
24 Plaintiff and the lack of any opposition by the Defendant --  
25 the Defendant is Fredrico, hm?

1 MR. TERMINI: Yes, Sir.

2 THE COURT: All discovery is stayed pending the  
3 outcome of the Plaintiff's appeal. Preliminary injunctive  
4 relief.

5 (Pause in proceedings)

6 THE COURT: This should not be taken as any  
7 indication of the showing of good cause required under Rule  
8 26(c). Let me give you a status conference date. September  
9 25th at 1:30 p.m. We could do that by phone. Okay, any other  
10 issues that anybody would like to raise?

11 MS. LEONARDO-BECKMANN: No, Your Honor.

12 MR. TERMINI: No, Your Honor.

13 MR. MOORE: No, Your Honor. We assume that the  
14 Defendants are aware of their responsibilities to preserve  
15 evidence for discovery that will be subsequently coming.

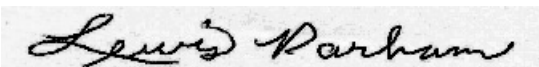
16 THE COURT: Thank you.

17 (Court adjourned)

18

19 CERTIFICATION  
20 I certify that the foregoing is a correct transcript from the  
21 electronic sound recording of the proceedings in the above-  
22 entitled matter.

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3/14/13

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Signature of Transcriber

Date